sively determined at the time the alleged ordinance relied on as a contract was adopted, that the assertion that there is a contract right is of so frivolous and unsubstantial a character as to afford no basis for jurisdiction.

The face of the record so clearly manifests the correctness of the third proposition, that we pass at once to its consideration. It is apparent on the face of the opinion of the court below that it did not at all rest its conclusion upon original reasoning concerning the asserted contract, but only applied to the decision of that question a doctrine which long prior to the adoption of the ordinance relied on as a contract had been announced by the court of last resort of Texas in *City of Brenham* v. *Brenham Water Company* (67 Texas, 542, decided in 1887), in which case there was involved a city ordinance which was substantially identical with the one which is here under consideration. Nothing could more conclusively demonstrate this view than does the following excerpt from the opinion of the court below:

"If this court is to adhere to the holding in the *Brenham* case, then we are forced to the conclusion that the judgment of the Court of Civil Appeals should be affirmed, for there is no possible theory upon which this case can be distinguished from the *Brenham* case. This statement will receive verification by a comparison of the two contracts, as set out in the opinions in the two cases." (105 Texas, 71.)

After pointing out that the doctrine of the *Brenham* case was consecrated by other decisions which had followed it, and that the principle of interpretation which it applied could not be said to be clearly erroneous, the court said (p. 74):

"However, we do not feel called upon to enter into any further discussion of the subject of the nature of the contract in this case, as it has been construed by the *Brenham* case, which authority has stood the acknowledged law

of this State for twenty-five years. At the time the contract in the case at bar was entered into, the *Brenham* case had been promulgated for over thirteen years and had been approved by all the cases heretofore cited. It had placed upon a similar contract a rule of construction, and announced the general policy of the law of this State that was well known to its bar and people. No rights could have innocently accrued to the plaintiff in error demanding a change of the law to meet a great and imperative necessity. If a harsh rule of construction had been announced, it was not placed under a bushel, but set upon a hill. Such contract had been declared repugnant to the Constitution, and the provisions of that instrument declaring monopolies and perpetuities contrary to the genius of a free government had received a definite construction."

It is insisted, however, that since it is our duty when the assertion is made that contract rights are impaired to determine for ourselves whether or not there was a valid contract, we must hence now determine this controversy by resort to original reasoning without regard to the action of the court below in applying the state rule. But while the premise upon which this contention rests is well founded, the error lies in the deduction which seeks to make it applicable to this case. This is clearly the case since the doctrine which the premise embodies is subject to this qualification, that where a contract which is relied upon arises from a state law or municipal ordinance having the effect of such law, in interpreting for itself such law or ordinance this court will not give to it a meaning in conflict with the settled rule of the State at the time the law was enacted or the ordinance adopted. In other words, that where we come to consider a contract arising from a state law or ordinance we will treat it as if there was embodied in its text the settled rule of law which existed in the State at the time the state action relied upon as a

contract was taken. *Burgess* v. *Seligman*, 107 U. S. 20; *Warburton* v. *White*, 176 U. S. 484; *Gulf & Ship Island R. R.* v. *Hewes*, 183 U. S. 66; *Freeport Water Co.* v. *Freeport*, 180 U. S. 587; *Great Southern Hotel Co.* v. *Jones*, 193 U. S. 532, 548.

As by the application of this settled rule the absolute want of foundation for the asserted claim of Federal right appears on the face of the ordinance relied upon, it follows that there was no foundation whatever for the theory upon which the jurisdiction of this court was invoked, and hence it is our duty to dismiss the cause for want of jurisdiction because of the absolutely unsubstantial and frivolous character of the Federal right relied upon.

Dismissed for want of jurisdiction.